

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BILLIE CLEM RAE,

Plaintiff,

v.

U.S. BUREAU OF PRISONS, et al.

Defendants.

:
:
:
:
:
:
:
:
:
:
:

CIVIL ACTION
NO. 99-3323

MEMORANDUM

BUCKWALTER, J.

January 13, 2000

I. BACKGROUND

Presently before the Court is the Government's second Motion to Transfer Venue. This case originated in the District of Columbia District. Plaintiff Billie Clem Rae, proceeding *pro se* and *in forma pauperis* filed the Complaint alleging that Defendants violated his First Amendment right to religious freedom when they disciplined him for offering a prison chaplain a free meal. At the time of the incident, the Plaintiff was incarcerated at the Federal Correctional Institute-McKean ("FCI-McKean), which is located in Bradford, McKean County, Pennsylvania.

The District Court of the District of Columbia granted the Government's first request to transfer venue and transferred the case to this Eastern District of Pennsylvania. The Government assumed that the Eastern District was the situs of important events and convenient for witnesses and the production of documents, evidently believing that the place of Plaintiff's

incarceration was within this District. In reality, FCI-McKean is located in the Western District of Pennsylvania.¹

II. LEGAL STANDARD

A district court may transfer the venue of any civil action for the convenience of parties and witnesses or in the interests of justice, to any other district where it might have been brought. 28 U.S.C. § 1404(a). The purpose of this section is “to prevent the waste of ‘time, energy and money’ and ‘to protect litigants, witnesses and the public against unnecessary inconvenience and expense’” Van Dusen v. Barrack, 376 U.S. 612, 616 (1964) (*quoting* Continental Grain Co. v. Barge FBL-585, 364 U.S. 19, 26-27 (1960)). Although § 1404(a) gives a district court the discretion to decide a motion based on an individualized case by case basis consideration of convenience and fairness, such motions are not to be liberally granted. Stewart Organization, Inc. v. Ricoh Corp., 487 U.S. 22, 29 (1987).

In ruling on a motion to transfer, the Court should consider “all relevant factors to determine whether on balance the litigation would more conveniently proceed and the interests of justice be better served by transfer to a different forum. See, Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995). The first step in a court’s analysis of a transfer motion is to determine whether venue would be proper in the transferee district. If the first prong of the inquiry is satisfied, the court then should determine whether a transfer would be in the interests of justice. Id. at 879.

¹ FCI-McKean is located in Bradford, PA which is in McKean County. McKean County is within the Western District. See 28 U.S.C. § 118. A potential point of confusion arises because Bradford *County*, PA is located in the Middle District.

III. DISCUSSION

A. Could the action have been brought in the Western District of Pennsylvania?

Any civil action wherein jurisdiction is not found solely on the diversity of citizenship may be brought in a district in which a substantial part of the events or omissions giving rise to the claim occurred. 28 U.S.C. §1391(b)(2). Since Plaintiff was incarcerated in McKean County at the time of the events alleged to be central to this case, venue would have been proper in the Western District.

B. Would a transfer to the Western District of Pennsylvania be in the interests of justice and for the convenience of witnesses and parties?

The second part of the transfer analysis requires a balancing of the interests of justice and the convenience of witnesses and parties. A court considers both private and public interests when deciding such a motion. Such factors include (1) the convenience and preference of the parties, including the plaintiff's choice of forum, (2) the convenience of witnesses, (3) access to sources of proof such as books and records, (4) practical considerations that make litigation easy, expeditious or inexpensive, (5) the relative calendar congestion of the two competing districts, (6) where the events at issue took place and the interest of the respective courts in deciding local controversies (7) the enforceability of any judgment and (8) the familiarity of the trial judge with the applicable law. See, Jumara, 55 F.3d at 879-880. The factors most relevant in this case will be discussed.

Normally the Plaintiffs' Choice of Forum is a paramount consideration that should not lightly be disturbed. See, First Union National Bank v. United States, 55 F.Supp. 2d 331, 332 (E.D. Pa. 1999). However, it is entitled to less deference when Plaintiff is neither a

resident of that district nor did the events at issue occur there. See Tranor v. Brown, 913 F.Supp. 388, 391 (E.D. Pa. 1996) (transfer granted because non-resident plaintiff had no connection with the district and the alleged malpractice had occurred elsewhere). Also, this case has already been transferred from the Plaintiffs' chosen forum. The Plaintiff has no connection with the Eastern District and never requested that the case be brought here.

The other factors point even more strongly towards transfer. Any witnesses that might be needed, except for Plaintiff, are located in the vicinity of FCI-McKean, in the Western District. The Defendant chaplain lives in that area. Secondly, any records related to the event are likewise located in Western Pennsylvania. Obviously, the alleged violation also occurred in the Western District.

IV. CONCLUSION

Since the Eastern District has absolutely no connection to this case, a transfer to the Western District of Pennsylvania should be granted.

An appropriate Order follows.

**UNITED STATE DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BILLIE CLEM RAE,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	NO. 99-3323
v.	:	
	:	
U.S. BUREAU OF PRISONS, et al.	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 13th day of January, 2000, upon consideration of the Defendant's Motion to Transfer Venue (Docket No. 5), and the Defendant's Response thereto (Docket No. 6), it is hereby **ORDERED** that the Motion is **GRANTED**, and the case will be **TRANSFERRED** to the Western District of Pennsylvania.

This case shall be marked **CLOSED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.